IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL REVISION APPLICATION NO.383 OF 2006

Mr.Deepak Kedar Kivale .. Applicant

Vs.

Mrs.Usha Deepak Kivale and Ors. .. Respondents

Mr.S.S.Kulkarni for the applicant

Ms.Seema Sarnaik for respondent no.1

Mr.S.S.Pednekar, A.P.P. for respondent no.3

CORAM : J.N.PATEL &
A.A.SAYED, JJ.

DATED : 7TH JUNE, 2007

P.C.:

1. Heard the learned counsel for the parties.

2. The applicant husband has challenged the judgment and order dt.30.06.06 passed by the Judge of the Family Court at Pune in Petition No.E-340 of 2005 which came to be filed by the respondents for seeking maintenance for herself as well as her son. The Family Court after recording the evidence found that the applicant wife has proved that the

respondent husband inspite of having sufficient means refused and neglected to maintain the applicants who are unable to maintain themselves and granted maintenance of Rs.1000/- per month to the petitioner wife and Rs.500/- to the petitioner child who on the date of application was 4 years old.

3. The relationship is not disputed. The only point which has been argued before us is that the petitioner husband suffers from mental illness and, therefore, he is incapable of maintaining himself and due to mental illness he is unable to earn and for this incapacity he should not be fastened with the liability to pay maintenance to respondent wife and son.

4. It is submitted by the learned counsel for the applicant that in support of his contention, the petitioner has examined Dr. Raj Prabhakar Varhade, a Psychiatrist whose evidence is not disbelieved by the learned Judge and inspite of that the learned Judge came to a finding that he is capable of maintaining the wife and the child.

5. The learned counsel for the respondent submitted that this plea has been raised in defence which is nothing but an after thought that the husband has gone to the psychiatrist only in the year 2005 for the first time and that too after filing of the petition so as to create evidence in his defence.

6. It is further submitted that even if the evidence of the psychiatrist is accepted, it does not dis-entitle the wife from claiming maintenance because the nature of mental illness which the petitioner husband is suffering from, does not bring him in the category of a person who is not capable of taking care of himself and as every able bodied person is bound to maintain his wife, the learned Judge of the family Court was justified in awarding maintenance. It is further submitted that the learned Judge has also taken into consideration the status of the parties and has been very kind to award maintenance which is otherwise meagre as only a sum of Rs.1000/- per month has been awarded to the wife and sum of Rs.500/- per month has been

awarded to the child which according to the learned counsel for the respondent is not sufficient to even bear the basic necessities of life.

7. We have examined the evidence on record and find that the learned Judge of the Family Court has considered the case in proper perspective particularly the medical evidence led by the petitioner to show his incapacity not only to maintain the respondent wife and child but even himself. The learned Family Court has observed in para 13 of the impugned Judgment and Order that the respondent cannot take advantage of his mental illness in order to avoid payment of maintenance and the evidence on record does not show that he is not doing any work and as such he is not getting any income. Not only this, the learned Judge of the Family Court has also taken into consideration that the petitioner husband is having agricultural land which is also a source of income in addition to working as a Welder and getting Rs.300 per day whereas it has been tried to be canvassed before us that he is working as a labourer with a vendor who sells Vadapav.

8. We find that the impugned judgment and order does not suffer from any error or illegality. The petitioner is an able bodied person having sufficient means of income and as he has refused and neglected to maintain his wife and child, the learned Judge of the Family Court was justified in awarding maintenance to the respondent wife and child. Therefore, we do not find any merits in the revision application and the same is dismissed with costs.

(SHRI J.N. PATEL, J)

(SHRI A.A. SAYED, J)